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RESEARCH REPORT

THE NEW-BRUNSWICK ABORIGINAL DUTY COUNSEL PROJECT

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The opinions expressed in this report are those of the author and do not necessarily reflect the views of the Department of Justice Canada.

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Executive Summary

This project was designed to improve the level of legal aid service to Aboriginal people in New Brunswick. The project was implemented on an experimental basis in Kent County, New Brunswick to serve Aboriginal people from the Big Cove, Buctouche, and Indian Island First Nations communities.

The need for a different approach to meeting the needs of native people became apparent with the large number of adjournments required by Aboriginal people at first appearance court. It was suspected that the difficulty in moving legal matters of Aboriginal people through the court reflected a number of difficulties experienced by Natives in communicating with the non-Aboriginal lawyers providing regular duty counsel service.

In order to explore the issues more carefully, and at the same time to put in place immediate steps to address the situation, an Aboriginal lawyer was hired to provide duty counsel service for Aboriginal people in the provincial court at Richibucto. The lawyer spoke Mi'Kmaq, the Aboriginal language of the region. The project commenced in December 1998. The project was supported in part by a contribution from the Department of Justice Canada, and monitored during the first year by the Research and Statistics Division of the federal Department of Justice.

During year one the project served 146 individuals, with a total of 305 duty counsel contacts. The most significant characteristic of the population of Aboriginal clients related to language ability. Twenty-four per cent of the clients reported that they spoke English poorly. Surprisingly, 8 per cent reported that they spoke only Mi'Kmaq This would explain in large measure the difficulties experienced by the non-Aboriginal lawyers providing service to this client population.

As well, a high proportion of the clients, 32 per cent, were women. This is much higher than the percentage of women among legal aid clients generally. Compared with Aboriginal men, Aboriginal women did tend to commit less serious offences than men. However, following the duty counsel stage of the criminal justice process, Native women received legal aid certificates in about the same proportion as they received duty counsel service. This indicates that women did not experience a disadvantage in receiving legal aid service because of any tendency to commit less serious offences.

The main outcome of the first year of the project was that adjournments for Aboriginal people was significantly reduced. Data from the same court for two years prior to the project showed that 43 per cent of Aboriginal people in 1996-97 and 46 per cent in 1997-98 required one or more adjournments. This was reduced to 24 % in the Aboriginal duty counsel project during December 1998 to November 1999. Duty counsel data from court proceedings in the Richibucto court served by a non-Aboriginal lawyer during 1998-99 showed that 45 per cent of Aboriginal clients required one or more adjournments, a level very similar to the pre-project period in the court in which the Aboriginal duty counsel project lawyer worked.

It is important to note that the decrease in adjournments did not translate into guilty pleas. During the pre-project period in the Richibucto court, 17 per cent of Aboriginal clients entered not guilty pleas at first appearance in 1996-97 and 25 per cent entered not guilty pleas in 1997-98. In

comparison, during the December 1998 to November 1999 period, 49 per cent of the clients of the Aboriginal Duty Counsel project entered not guilty pleas at first appearance. This compares with 28 per cent of Aboriginal people entering pleas of not guilty at first appearance in the comparison court served by the non-Aboriginal lawyer during the same time period.

The Big Cove First Nation has a number of community services such as anger management, marital counseling, and drug and alcohol counseling. These services are available to deal with issues that may be related to the actual offences committed by Aboriginal people. The Aboriginal lawyer reported that she referred clients on 71 occasions to the various community services. This signals a more "holistic" approach to the needs of Aboriginal clients than may have been the case in the past.

In conclusion, this "intensive" form of duty counsel was successful during the first year of operation. The Aboriginal Duty Counsel project achieved both client service and system efficiency objectives. The preliminary data from the first year of operation demonstrate that this project is an effective way to meet the special needs of this client population.

1. PROJECT BACKGROUND AND RATIONALE

This project was implemented by Legal Aid New Brunswick to develop more effective ways of meeting the needs of Aboriginal clients. The project was intended to address difficulties being encountered with a large number of Aboriginal people appearing at the regional court at Richibucto on their first appearance. Communication between the Aboriginal accused and the regular duty counsel lawyers was not sufficient to move many cases through the plea stage without what was thought to be too many adjournments. The perception was that Aboriginal people often did not understand the nature of the court process and the charges. It was thought that the unusually large number of adjournments reflected the fact that there was not "sufficient time for an exchange of information and an explanation of what options may be available so that the accused is prepared and understands what will happen on plea day".[1] The project involved hiring an Aboriginal lawyer to deal with Aboriginal people appearing at first appearance court in an area of the province with a heavy concentration of Aboriginal people, Kent County in the northwestern part of the province.

Three First Nations communities are located in that area. Big Cove is by far the largest with a population of about 2210. There are two smaller communities, Indian Island with a population of about 140 and Buctouche with a population of about 80 inhabitants.

Aboriginal people represent a high proportion of the population Kent County overall. The total population of the county was about 33,000 according to the 1996 census. About 7.4 % of the population is made up of Aboriginal people. By way of comparison, about 1.4 % of the population of the province (729,630) identified themselves as Aboriginal (10,250) in the most recent census.

Data made available by the Royal Canadian Mounted Police confirmed that Aboriginal people were coming into conflict with the law in disproportionately large numbers in the RCMP District in which Big Cove is located, and for the community of Big Cove itself. Table 1.1 reports the RCMP data for a six-month period preceding the development of the project.

[1] Proposal p. 2

Table 0.1: Criminal Code Offences and Charges Proceeding to Court

Criminal Code Offense Files Opened

Total For District 5	Total For Big Cove
1584	416 (26%)

Charges Proceeding to Criminal Court

Offence Type	**Total For District Five**	**Total For Big Cove**
Offences Against The Person	92	44 (48%)
Offences Against Property	104	18 (17%)

These data reflect the extent of over-representation of Aboriginal people in the Canadian justice system, a problem that is by no means unique to New Brunswick. Recall that the Aboriginal population of Kent County is about 7.4% of the total population. The percentage of criminal code offence files opened on Aboriginal people is just under four times their proportion in the population. The percentage of Aboriginal people charged with an offence against the person is about seven times their representation in the population. The experience of legal aid lawyers in New Brunswick was that Aboriginal clients were more difficult to serve well because of language difficulties. The over-representation of Aboriginal people in the justice system magnifies what would be a problem in any case.

Over-representation is a problem that effects legal aid delivery. However, the project was not conceived as a part of the solution to over-representation. Over-representation of Aboriginal people in the Canadian justice system is a complex problem. Explanations for over-representation are still the subject of debate. LaPrairie has identified four possible causes of overrepresentation: differential criminal justice system processing as a result of culture conflict and racial discrimination, higher Aboriginal offending rates, commission by Aboriginal people of offences more likely to result in carceral sentences, and criminal justice policies and practices that have a differential impact on Aboriginal people due to their socio- economic conditions.[2] Whatever the complex set of causes that leads to them to the over-representation syndrome, Aboriginal people tend to appear in court in relatively large numbers. The over-representation of a client group that presents special needs is a significant service delivery problem.

Language was also perceived to be an issue with regard to service delivery. Exact numbers were not known. However, it was perceived that a significant minority of Aboriginal accused persons

2 Carol LaPrairie, Examining Aboriginal Corrections, Ministry of the Solicitor General, Ottawa, 1996.

from the area spoke the traditional Mi' Kmaq (pronounced Mic Mac) language, and understood Mi' Kmaq better than English or French. This posed a problem for communication with the court and legal aid duty counsel lawyers.

The proposed solution was to employ an Aboriginal lawyer as duty counsel in first appearance court. The lawyer represents Aboriginal accused at first appearance court, where plea is entered and bail is arranged. An office for the lawyer was established at the band council office on the Big Cove reserve. An office located on the reserve was intended to make contact with accused persons not held in custody easier. As well, the on-reserve location served to more firmly identify the lawyer with the Aboriginal community.

The Aboriginal duty counsel lawyer attended court two half days per week. Later in the project an additional half day was added to cover youth court. Aboriginal people appearing on the other two days received service from a regular duty counsel lawyer.
The project was funded by Legal Aid New Brunswick with a contribution from the Department of Justice, Canada. The project was administered through a local law firm that provided support to the duty counsel lawyer. An office for the lawyer was established at the band council office on the Big Cove reserve.

The project commenced in December 1998. This report covers the first year of operation of the duty counsel project, up to December 1999. The project is still in operation.

2. PROJECT OBJECTIVES

The project was conceived as a "limited service trial" by Legal Aid New Brunswick to ascertain more clearly the nature of the problem. It was recognized that the project "may require significant adjustment and fine tuning based on circumstances encountered during the actual delivery of the service."[3]

Notwithstanding the exploratory nature of the project, some tentative program objectives were articulated. The project objectives stated in the project proposal were as follows.

1) To explain to the client their right to obtain a lawyer and to inform them of their right to speak for themselves in court;

2) To ensure that the client understands the charges and their legal rights and responsibilities in regard to their charges;

3) To explain to the client the nature and meaning of any measures taken against them by the court; and,

4) To clarify the meaning of forms or measures such as probation orders, undertakings, conditional releases, etc.[4]

These specific objectives might have been achieved by a paralegal worker or court worker. This issue was discussed between the Department of Justice and Legal Aid New Brunswick as project funding was being considered. The province of New Brunswick does not have a Native Court Worker Program, as is the case in several other provinces and territories. Because the Department of Justice has a national program to fund court worker services, developing an "experimental" court worker model for service delivery was problematic.

The province expressed a desire to combine legal information services that might have been provided by paraprofessional with a legal representation function. Thus the project assumed its current form.

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[3] Proposal, p. 2.
[4] Proposal, p. 1

3. METHODOLOGY

This is not an evaluation of the project. It is a monitoring exercise, intended to trace the experience of the project in its first year of existence, and to raise questions for the future development of the project. Questions of whether formal objectives have been met are not addressed. Questions about whether the particular approach chosen was the best one to address the stated objectives are not addressed. The cost-effectiveness of the project is not assessed.

The analysis uses four data sets. Two data sets represent the regular duty counsel service for two years prior to the project, 1996-97 and 1997-98. These data allow limited pre-project – project comparisons. One data set represents the regular duty counsel service operating at the same time as the project, December 1998 to December 1999. This allows a limited contemporaneous comparison with the project. The data were limited to the court in Richibucto, New Brunswick where Aboriginal people from the area were most likely to appear. This yielded a limited amount of administrative data that were coded from regular duty counsel report forms (Appendix I). The forth data set represents the Aboriginal Duty Counsel project. The data represent the period from December 1998 to December 1999. A special data collection form was designed to gather data from the Aboriginal duty counsel project (see appendix I). This database included somewhat more detailed data than the regular duty counsel data from the management information system.

Duty counsel data can be complex. Regular administrative duty counsel information is recorded daily, based on clients seen at first appearance court. Because the information is recorded daily, a contact is recorded each time a person sees the duty counsel lawyer, so long as the contacts occur on separate days. The same accused individuals may have repeat contacts with the duty counsel lawyer regarding one arrest. As well, the same person can have repeat contacts with the duty counsel lawyer because of successive arrests and charges.

Thus there are three possible units of analysis; times seen, separate charges (single or multiple), and unduplicated individuals. Times seen may be relevant to duty counsel workload. Contacts related to separate arrests might be relevant to process issues such as the number of adjournments. Unduplicated individuals would be the appropriate unit of analysis for personal characteristics.

The Aboriginal Duty Counsel Project data set contained 305 contacts, reflected 221 appearances on new charges, and involved 146 separate individuals.

The comparison data from the pre-project duty counsel service in 1996-97 and 1997-98, and the 1998-1999 regular duty counsel data are counts of duty counsel contacts, rather than persons or separate charges. The main purpose of these data sets is to derive a proportion of matters adjourned, the proportion of guilty pleas, and the proportion of not guilty pleas. The presence of repeat contacts for the same charge corrupts these data sets for that purpose. It is not possible to adjust these databases to represent separate new charges from the present number of visits unit of analysis because sufficiently detailed data on charges are not available. It would be possible to adjust them to unduplicated persons. However, that is not the ideal unit of analysis for the analysis of adjournment and plea. Therefore, the limited calculations carried out on the regular

duty counsel databases will be done on the original databases reflecting total number of visits. This is not ideal. However, these data will only be approximations rather than precise measures.

Aboriginal Identity of Clients

The duty counsel project served only Aboriginal people. If comparisons were to be made, it was necessary to identify Aboriginal clients in the pre-project and the contemporaneous data sets constructed from the regular duty counsel reports. Aboriginal status is not identified on these reports. Aboriginal status was assigned on the basis of name identification. Aboriginal surnames are highly identifiable in that area of New Brunswick. These names were identified and designated as Aboriginal on the database. A list of residents of the local Aboriginal communities was used to assist in the identification process. The Native communities in this area are small certain names are very common. The problem often arises in distinguishing the several people with the same surname and similar given names, rather in identifying people who identify themselves as Aboriginal.

In spite of attempts to accurately identify individuals, this was not a perfectly reliable process. It is unlikely that many false positives were identified, people identified as Aboriginal but who are not. It is more likely that false negatives occurred. Some Aboriginal people might not have been identified as such. However, it was assumed that the error factor would be small, and any percentage differences between Aboriginal and non-Aboriginal clients would not be significantly affected.

The name identification method identified 194 Aboriginal surnames from among the regular duty counsel contacts from 1996-97, and 161 Aboriginal last names from the first nine months of 1997-98 (the project began in December of 1998). Grossing up the number of Aboriginal duty counsel contacts to a full year for 1997-98 would yield about 200 Aboriginal contacts for the full year. This seemed like a reasonable outcome based on the RCMP data presented in Table 1.1. According to those data 110 people from the Big Cove First Nations Community were charged with criminal offences that proceeded to court over a six month period. This would be approximately 220 people for a one-year period. This number is close enough to the numbers of Aboriginal duty counsel contacts identified in the two years prior to the project to suggest that the name identification method yielded reasonably accurate results.

Interview Data

It was decided at the outset that Aboriginal clients would not be interviewed in order to gather client satisfaction or other qualitative data. A fairly high degree of alienation of Aboriginal people from the justice system is taken as a given. In addition, during the period when the project was being monitored, The Big Cove reserve was involved in a volatile political conflict with the provincial and federal governments over treaty-based logging and fishing rights. Political tensions were high. These factors would probably have compromised the validity and reliability of any attitude data. As well, it was expected that these people would have been very difficult to contact for telephone interviews. This would have further compromised the utility of the data.

4. PRE-PROJECT DUTY COUNSEL DATA

In 1996-97 there were 723 duty counsel contacts at the Richibucto court. About 26.9 % of all duty counsel contacts involved Aboriginal people. In 1997-98 there were 565 duty counsel contacts at that court location. 24.8 % of the duty counsel contacts in that year involved Aboriginal people. The percentage of Aboriginal people appearing in court for both years was well above the 7.4 % of Aboriginal people in the general population of the county.

The nature of the problem that was identified by Legal Aid New Brunswick becomes clear when pleas entered by accused persons is examined. Table 4.1 shows that compared with non-Aboriginals, a much larger number of Native people were likely to be granted an adjournment.

Table 0.1: Plea Entered by Aboriginal Status: Regular Duty Counsel Service

	1996-1997				1997-1998			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
Plea	No.	%	No.	%	No.	%	No.	%
Guilty	70	36%	199	38%	47	29%	167	41%
Not Guilty	33	17%	141	27%	40	25%	108	27%
Adjourned	83	43%	161	30%	74	46%	113	30%
Other	8	4%	27	5%	0	0%	16	2%
TOTAL	194	100%	529	100%	161	100%	405	100%

In 1996-97, 43 % percent of Aboriginal accused had their cases adjourned, and in 1997-98 46 % had cases adjourned. This compares with 30 % of non-Aboriginal accused in each of those years. This confirms the perception, and is the apparent consequence, of Legal Aid New Brunswick that sufficient time was not available for an exchange of information and an explanation to the client of the options available, and the court process.[5]

A second aspect of the data presented in Table 4.1 is also of particular interest. A smaller percentage of Aboriginal people entered guilty pleas compared with non-Aboriginals. In 1996-97, 36 % of Aboriginal accused compared with 38 % of non-Aboriginals. The difference was even greater for 1997-98. In that year, 29 % of Aboriginal people entered guilty pleas at first appearance, compared with 41 % of non-Aboriginals.

This finding is somewhat surprising. The conventional wisdom about the experience of Aboriginal people in the criminal justice system is that they tend to plead guilty "to get it over with". This is usually explained in terms of the alienation that Aboriginal people feel toward the justice system, the mistrust that they feel toward White lawyers, and the confusion that arises out of a lack of understanding of how the justice system works. The lack of understanding may also arise from a language barrier. Aboriginal people may understand or speak English or French poorly, and thus are limited in their ability to communicate with lawyers about complex legal issues.

[5] Proposal, p. 2.

Finally, some traditional Aboriginal cultures do not have the same concept of *guilt* that is embodied in the Euro-Canadian justice system. The literature contains accounts of Aboriginal people pleading *guilty* to an offence, when they are merely acknowledging that they committed an act. Culpability and intent are not part of the concept in Aboriginal culture. Thus, the incident that resulted in a charge being laid may be not viewed by the Aboriginal accused as one for which he or she should, in fairness, to be punished.

The higher percentage of adjournments for Aboriginal people may be reflected in the lower percentage of both guilty pleas and not guilty pleas. The presiding judge at the Richibucto court has the reputation of scrupulously attempting to assure that the Aboriginal people appearing in his court are aware of the nature of the charges and of the justice process. He has a reputation for encouraging Aboriginal people who have not consulted the duty counsel lawyer to do so before proceeding.[6] This is no doubt a major reason for the larger number of adjournments and the lower number of pleas, including guilty pleas. It probably reflects in a general way the positive impact of a decade or more of judicial sensitization initiatives that have resulted from an increasing awareness of the problems faced by Aboriginal people in the justice system.

Finally, one is led to wonder about the impact of a specialized Aboriginal duty counsel program. Perhaps the number of adjournments can be reduced, and a justice system objective of increased efficiency can be achieved. The rate of guilty pleas is already lower for Aboriginal people than for non-Aboriginal accused.

[6] Information supplied by the Provincial Director, Legal Aid New Brunswick.

5. ABORIGINAL DUTY COUNSEL: FIRST YEAR DATA

The project began taking clients in December 1998. During the implementation phase of the project, up until December 1999, the project duty counsel lawyer represented 146 Native clients. This is a much larger number than the numbers of duty counsel contacts identified as Aboriginal in the pre-project data for the two years prior to the project. The name matching process identified 194 Aboriginal people in 1996-97 and 161 for the first nine months of 1997-98. It was noted above that the Aboriginal duty counsel lawyer provided service only three days a week. The total of 146 clients serviced by the Aboriginal duty counsel project appears reasonable in comparison with the other numbers.

6. GENDER

The majority of duty counsel clients were male. Ninety-nine clients, 67.8 % were male, and 49 clients, or 32.2 % were female. The vast majority of criminal accused are typically male. However, the female representation seems a great deal higher than what one might expect. For the entire Ontario legal aid plan criminal legal aid caseload, males made up 83 % and females made up 17 % in 1996-97.[7] In a previous study of duty counsel clients in the Province of Manitoba, males made up 81.5 % of the clientele, while women made up 18.5 %.[8]

Table 6.1 below shows data representing the percentage of Aboriginal and non-Aboriginal women served by duty counsel in New Brunswick. During the two years prior to the project, Aboriginal women made up a relatively large proportion of all Aboriginal contacts with duty counsel compared with non-Aboriginal people.

Table 0.2: Percentage of Women Receiving Duty Counsel Services; Aboriginal and Non-Aboriginal

	Regular Duty Counsel Service					
	1996 - 1997		**1997 -1998**		**1998 - 1999**	
	No.	**%**	**No.**	**%**	**No.**	**%**
			Aboriginal			
Male	156	79.4%	122	75.8%	86	72.3%
Female	38	19.6%	39	24.2%	33	27.7%
			Non-Aboriginal			
Male	458	86.6%	362	89.4%	439	92.4%
Female	71	13.4%	43	10.6%	36	7.6%

Women in this sample make up almost twice the proportion of the client base as Ontario generally or the Manitoba sample. The Ontario and the Manitoba data represent general legal aid populations, not Aboriginal specific groups. It appears that Aboriginal women are charged by the police more frequently than what might be expected. It is not clear at this point what this much larger representation of women in the sample means with regard to legal aid service.

[7] Annual Report, Ontario Legal Aid Plan, 1997. P. 8

[8] A. Currie, The Legal Aid Manitoba Expanded Duty Counsel Project, Department of Justice, Ottawa, 1996. P. 19

7. AGE COMPOSITION

The age distribution of the project population is not entirely typical. Unfortunately, age data were not provided for more than half of the client population, 71 or about 50 % of the population. For that reason, one must be hesitant about attempting to tease meaning out of the data. Table 7.1 shows the age distribution of the clients for whom information on age were provided. The distribution is bimodal. The highest peak is, as one would expect, at the 20 - 24 age group.

Table 0.3: Age Distribution of the Project Client Population

Age Group	Number	Percent
15 - 19	16	22.5
20 - 24	16	23.9
25 - 29	13	18.4
30 - 34	5	7.0
35 - 39	15	21.1
40 - 44	3	4.3
45 +	2	2.8
TOTAL	71	100.0

There is a larger than expected representation at the 35 - 39 age group. Analysis of age by most serious offence does not suggest any reason for this. Again, the age data are very incomplete. A second possibility is that a "small numbers" effect is operating to produce an unusual distribution. Conclusions drawn from these data would be weak.

8. LANGUAGE

One surprising observation is the number of duty counsel clients who speak English poorly. The clients were asked how well they were able to speak English, French, and the traditional

Table 0.4: Language Facility

	Mi' Kmaq	**English**	**French**
Ability to Speak			
Well	88.1 %	67.8 %	0.0 %
	(104)	(80)	(0)
Poorly	1.7 %	23.7 %	0.0 %
	(2)	(28)	(0)
Not at all	10.2 %	8.5 %	100.0 %
	(12)	(10)	(117)
TOTAL	100.0 %	100.0 %	100.0 %
	(118)	(118)	(117)

language of the First Nations people in this region - Mi' Kmaq. A very large percentage of the sample report being able to speak the native language well. A very important observation is that 23.7 % of the population claim to speak English poorly and 8.5 % report that they do not speak English at all. The use of French in this officially bilingual province does not make up for not speaking English. Only one person claimed to speak French well.

These data confirm the perceptions of Legal Aid New Brunswick about the number of Aboriginal people not understanding English or French well enough to communicate effectively with the duty counsel lawyer. These data suggest that a serious problem existed for service delivery. Because of linguistic barriers, about 32 % of the population would have difficulty understanding the justice process in courts that operate on the two official languages, English or French. Obviously, justice services in the Mi' Kmaq language are necessary in order to assure that these First Nations people can understand the court process and thus receive fair and informed treatment in the criminal justice process. It is well to keep in mind that this project is limited to duty counsel services. What happens to these people in the subsequent stages of the justice process is an important question.

9. OFFENCE TYPES

The people in the sample were charged with about twenty different offences, the vast majority of which fell into a few offence categories. More than half of all offences are made up of only three

Table 0.5: Most Serious Offences

Offence	Number	Percent	Cumulative Percent
Assault	43	29.5 %	32.5 %
Motor vehicle	27	15.5 %	48.0 %
Mischief	12	8.2 %	56.2 %
Break and Enter/ Possession	15	10.7 %	66.9 %
Breach of Probation	10	6.8 %	73.7 %
Sexual Assault	4	2.7 %	76.4 %
Uttering Threats	4	2.7 %	79.1 %
Other	31	19.9 %	100.0 %

offence categories. Seventy-five percent of all offences comprise only five offences. This is not atypical. Most criminal offences tend generally to fall into a small number of offence categories.

Many offences would not meet the normal legal aid coverage provisions. Most notably, motor vehicle offences make up nearly 15 % of all offences. The "other" category includes 15 provincial offences, about 5 % of the total, that would not be covered by legal aid.

10. OFFENCE AND GENDER

The table below shows that the offences for which women are charged are more concentrated in assaults and mischief. Males are charged with break and enter relatively more frequently

Table 0.6: Offences by Gender

	Male		Female	
Offence	**No**	**%**	**No**	**%**
Assault	23	23.2 %	20	42.6 %
Motor Vehicle	19	19.1 %	8	17.0 %
Break and Enter	14	14.0 %	1	2.1 %
Mischief	7	7.0 %	5	10.6 %
Breach of Probation	9	9.0 %	1	2.1 %
Escape Custody	4	4.0 %	0	0.0 %
Other	22	22.7 %	12	25.6 %
TOTAL	99	100.0 %	47	100.0 %

than women. Men are somewhat more likely to be charged with motor vehicle offences and with breach of probation than are women.

Apart from meeting the financial eligibility requirements, receiving legal aid depends on the risk of imprisonment. In part, the risk of imprisonment relates to the level of seriousness of the offence. As well, the criminal background or history of the offender is a determinant of risk of imprisonment. It has already been demonstrated that the women in this sample tend to commit less serious offences compared with men. This means that overall, they would be less likely to face imprisonment, and therefore to receive legal aid. The table below shows that women have fewer prior convictions. This also indicates that women would be less likely to receive legal aid, assuming that a person with fewer prior convictions is less likely to be at risk of imprisonment.

Table 0.7: Prior Offences by Gender

	Male		Female	
Prior Offences	**No.**	**%**	**No.**	**%**
Yes	40	40.0 %	9	19.1 %
No	28	28.5 %	23	48.9 %
N/A	31	31.3 %	15	32.0 %
TOTAL	99	100.0 %	47	100.0 %

It is often observed that women are disadvantaged with respect to receiving criminal legal aid compared with men. This is because they tend to commit offences that are less serious than those committed by men. They are thus less likely to be covered by legal aid since the offences they

commit would be less likely overall to carry a risk of a jail sentence. These data show that women are relatively more likely to be charged with assault and mischief, and less likely to be charged with the break and enter. All other things being equal, break and enter would be considered more serious than assault or mischief. On the other hand, males are more likely to be charged with motor vehicle offences than women. Motor vehicle offences do not carry a high risk of imprisonment.

On strictly numerical grounds, this issue is more significant for Aboriginal women than for non-Aboriginals. Women make up 32.2 % of all Aboriginal people served by the Aboriginal duty counsel project. It was pointed out above that the proportion of Aboriginal women served by the duty counsel project is greater than the proportion that one would normally expect in criminal legal aid. Aboriginal women also make up a much larger percentage of Aboriginal people served by the regular duty counsel service than of non-Aboriginal women as a percentage of all non-Aboriginal people charged.

11. RELATED OFFENCES AND CRIMINAL HISTORIES

The number of offences with which the offender is charged, the number of prior offences, more specifically the number of related prior offences, and whether the offender is in breach of a judicial order are all indicators of the seriousness and complexity of offences. The following is a profile of these case characteristics for the duty counsel client population.

According to these data, the majority of the Aboriginal offences were charged with only one offence. A substantial number of offenders were facing two charges. About eighty percent of the population were charged with only one or two charges.

Table 0.8: Number of Criminal Charges

Number of Charges	**Number**	**Percent**
One	83	58.0 %
Two	38	26.6 %
Three	12	8.4%
Four or More	10	6.9 %
N/A	3	0.1 %
TOTAL	146	100.0 %

Most of the offenders in the sample had an offence history. Forty percent of the

Table 0.9: Prior Offences

Prior Offences	**Number**	**Percent**
Yes	58	40.1 %
No	49	34.0 %
N/A	39	25.9 %
TOTAL	146	100.0 %

population reported to the duty counsel lawyer that they had committed prior offences. About 34 % reportedly had no prior record. Unfortunately, the data are not complete for about 25 % of the population.

Among those who had a prior record, 61.0 % had committed a related offence.

Table 0.10: Related Prior Offences

Related Priors	Number	Percent
Yes	31	21.3 %
No	95	65.0 %
N/A	20	13.7 %
TOTAL	146	100.0 %

According to the duty counsel records, about one fifth of the population with prior offences, 21.3 %, had prior offences that were unrelated to the current charges.

Finally, 18.7 % of the population of clients were in breach of a judicial order at the time of, or as a consequence of, the current offence.

12. LOCATION OF DUTY COUNSEL CONTACTS

The duty counsel lawyer encountered the majority of clients in-court. One of the main

Table 0.11: Location of Duty Counsel Contacts

Location	Number	Percent
In court	98	67.2 %
In custody	16	11.1 %
Band Office	23	15.4 %
N/A	9	6.3 %
TOTAL	146	100.0 %

objectives of establishing a duty counsel project office on the reserve was to facilitate more intensive contact with the accused people. It was felt that the more intensive service was key to providing the service required to Aboriginal people who required more explanation about the charges against them and the nature of the court process.

There is no information about the differences between the nature and quality of contacts with clients at the band Office and in court. Nonetheless, this possibly indicates that a system could be designed to facilitate more first meetings between the duty counsel lawyer and clients at the band counsel office. This would allow the opportunity for discussion between the lawyer and clients in a less hurried atmosphere than the court.

13. INTENTION TO PLEAD

It was observed earlier that the conventional wisdom holds that Aboriginal people sometimes plead guilty when a defense is possible, just to "get it over". Alienation from the system, confusion about the nature of the justice process, and the simple absence of ability to understand the options available because language barriers are usually cited as reasons for the "pleading out" syndrome. The rationale for this project emphasizes limited communication between the Aboriginal clients and duty counsel prior to the project. The possibility that Aboriginal clients were pleading guilty when a defense should have been pursued, all because of poor communication between client and counsel, was not an explicit rationale for the project. However, this was viewed to be a distinct possibility, in view of the conditions that did give rise to the project.

Therefore, questions were asked about the client's intention to plead, the duty counsel lawyer's advice concerning plea, and the actual plea that was entered. As the table below shows, either there was no tendency to "plead out", or the presence of the Aboriginal lawyer acting as duty counsel had no effect on doing so. Data are available on approximately 75 people who entered guilty pleas. The percentage differences in Table 13.1 are very small.

Table 0.12: Intention to Plead, Legal Advice and Plea Entered

	Number*	**Percent**
Intended to Plead Guilty	38	26.0 %
Advised to Plead Guilty	39	26.7 %
Entered a Guilty Plea	40	27.4 %

*Total N = 146

However, it is clear that the duty counsel lawyer did not dissuade clients from entering guilty pleas. Data presented above showed that the number of guilty pleas was already relatively low compared with the non-Aboriginal population.

14. ACTUAL PLEAS

About one quarter of the clients of the Aboriginal duty counsel project entered guilty pleas at first appearance.

Table 0.13: Plea Entered at First Appearance By Aboriginal Clients

Plea Entered	Number*	Percent
Not Guilty	72	49.4 %
Guilty	40	27.4 %
Adjourned	34	23.2 %
TOTAL	146	100.0 %

These results are all the more interesting when compared with the pre-project data reported in Table 14.2 The table below shows the comparative data. The percentage of Aboriginal people entering not guilty pleas was only 17 % in 1996-1997 and 25 % in 1997-1998.

Table 0.14: Plea at First Appearance: Pre-Project and Project Comparisons (Aboriginal Clients Only)

	Regular Duty Counsel		Aboriginal Duty Counsel Project (N=146)
	1996-97 (N=194)	1997-98 (N=161)	
Disposition			
Not Guilty	17 %	25 %	49 %
Guilty	36 %	29 %	27 %
Adjourned	43 %	46 %	24 %

A major impact of the project is the decline in the number of adjournments. The proportion of adjournments has dropped significantly to about 24 % of outcomes from the two previous years in which the percentage of adjournments was 43 % and 46 %. The percentage of offenders entering guilty pleas declined to 27 % from 29 % in 1997-98 year and 36 % in the year prior to that, 1996-97. However, the most dramatic shift seems to have been between adjournments and guilty pleas.

It appears that most of the decline in adjournments resulted in clients entering pleas of not guilty. About 49 % of the Aboriginal people served by the Aboriginal Duty Counsel Project entered pleas on not guilty. Only 17 % of offenders identified as Aboriginal in 1996-97, and 25 % in 1997-98 entered not guilty pleas.

The data presented in Table 13.1 show that there was very little shift between intention to plead and actual plea by Aboriginal accused served by the Project. In the same population that showed no shift between intention to plead and actual plea, 49 % of clients entered not guilty pleas. In the

previous two years, only 17 % and 25 % of Aboriginal people who were served by the regular duty counsel program entered initial pleas of not guilty without one or more adjournments. One can surmise that intentions concerning pleading should not be too different in the two previous years. However, in those years many fewer Aboriginal people entered initial pleas of not guilty.

The data provide indirect evidence of the absence of effective communication between the duty counsel lawyer and the client in the two pre-project years. The greater numbers of adjournments appear to reflect the inability of the Aboriginal clients to communicate their intention to enter pleas of not guilty.

Certainly, many accused may have eventually entered not guilty pleas following the adjournment of their case. The data treat each appearance as a unique event. They do not provide the level of detail to track individual accused from adjournment to entering a plea.

15. LANGUAGE ABILITY AND INTENTION TO PLEAD

It was noted above that about 23.7 % of all Aboriginal clients reported that they spoke English poorly. About 8.5 % did not speak English at all according to the self-report data. It might be expected that people with poor English language skills might be more likely to intend to plead guilty than those who speak English well. However, the project data shown below in Table 15.1 indicate no discernable tendency for Aboriginal people with poor English language skills. The difference in the percentage of people entering guilty and not guilty pleas among those who understand English poorly is 8.7 % (26.3 – 17.6).

Table 0.15: English Language Skills and Intention to Plead

	Intention to Plead					
	Guilty			Not Guilty		
Ability to Speak English	**Male**	**Female**	**Total**	**Male**	**Female**	**Total**
Poor	24.0 %	30.8 %	26.3 %	14.9 %	22.2 %	17.6 %
	(6)	(4)	(10)	(7)	(6)	(13)
Well	64.0 %	53.8 %	60.5 %	55.3 %	44.4 %	51.4 %
	(16)	(7)	(23)	(26)	(12)	(38)

The percentage difference between people entering guilty and not guilty pleas among those who speak English well is 9.1 % (60.5 – 51.4). The two percentage differences, 8.7 % for those who speak English poorly and 9.1 % for those who speak English well, are too similar to suggest a difference based on ability to speak English.

The data do not show any substantial differences for males and females. For men who speak English poorly, there is a 9.1 % difference between entering guilty and not guilty pleas (24.0 – 14.9). For women who speak English poorly, there is an 8.6 % difference (30.8 – 22.2). For men who speak English well, there is an 8.7 % difference between those entering guilty and not guilty pleas (64.0 – 55.3). The comparable percentage difference for women who speak well is 9.4 % (53.8 – 44.4). The percentage differences for men and women are not large enough to suggest that language ability makes any significant difference between men and women in intention to plead.

It is possible that the influence of the Aboriginal duty counsel has diminished any tendency for Native people with poor English skills to plead guilty.

16. OUTCOMES BETWEEN ABORIGINAL DUTY COUNSEL AND REGULAR DUTY COUNSEL SERVICE

The Aboriginal Duty Counsel Project lawyer was in court three days per week. A regular duty counsel service operated at the same time as the special Aboriginal duty counsel service. Thus, there were two days on which the Aboriginal duty counsel lawyer was not available in court, and on those days some Aboriginal people were seen by the regular duty counsel. This situation affords the opportunity to make another set of comparisons between the Aboriginal duty counsel service and regular duty counsel.

Data were gathered from the Legal Aid New Brunswick duty counsel reports for the Richibucto court for the same period during which the Aboriginal Duty Counsel project operated. This provided a comparison sample in which clients were served by a non-Aboriginal lawyer. During that period, there were 594 duty counsel contacts. Using the method of name identification, Aboriginal people were identified from the list of accused seen by duty counsel. One hundred and nineteen persons, or 20 % of the 1998-1999 duty counsel population were identified as Aboriginal persons.

The duty counsel data shown in the table below are from the Richibucto court, and cover the same period as the first year of operation of the Aboriginal duty counsel project.

Table 0.16: Outcome at First Appearance Court for Aboriginal and Non-Aboriginal Accused Regular Duty Counsel Service. 1998-1999

	Aboriginal	**Non-Aboriginal**
Outcome		
Guilty	27.7 %	44.2 %
	(33)	(210)
Not Guilty	27.7 %	28.0 %
	(33)	(133)
Adjourned	44.5 %	27.8 %
	(53)	(475)
TOTAL	100.0 %	100.0 %
	(119)	(475)

The data in this table are similar to the two years of pre-project data. The proportion of adjournments for Aboriginal people served by non-Aboriginal lawyers is high relative to non-Aboriginals. In 1996-97 the percentage of adjournments for Aboriginal people was 43 %, and in 1997-98 the proportion was 46 %. The figures for non-Aboriginal people were 30 % in each year (Table 4.1). The Aboriginal people represented by these data appeared in the same court in front of the same judge as Aboriginal people who received the services of the Aboriginal duty counsel lawyer. The table shows that the percentage of adjournments was 44.5 %, very similar to the proportion of adjournments during the two years prior to the Aboriginal Duty Counsel Project. During the same time, the proportion of adjournments for clients in the Project was 23.2 % (see table 14.1). It seems clear that the presence of the Aboriginal lawyer is a critical factor in decreasing the number of adjournments.

27.7 % of the Aboriginal people receiving the services of the regular duty counsel entered guilty pleas. This is about the same as the 27.4 % of those receiving assistance from the Aboriginal Duty Counsel project.

The percentage of not guilty pleas by Aboriginal people receiving regular duty counsel service is 27.7 %. This is significantly lower than the 54.6 % for the Aboriginal people who received the services of the special duty counsel lawyer. The larger number of adjournments experienced in the regular duty counsel scheme might eventually translate mostly into pleas of not guilty.

17. GUILTY PLEAS AT FIRST APPEARANCE

Seventy-five clients entered pleas of guilty. Data about the specific efforts undertaken by the duty counsel lawyer for particular clients were not gathered. We know that the lawyer spoke to sentence for those who wished to plead guilty, but details of negotiations with the Crown or reduced charges were not collected.

Data on outcome were available for 41 of the 75 clients who entered guilty pleas at first appearance. The table below shows the sentences received. In all, about 30 % were given a jail sentence alone or jail combined with either fine or fine and probation. Almost 70 percent were given sentences involving other than incarceration

Table 0.17: Sentences Received by Clients Entering Guilty Pleas

Sentence	Number	Percent
Jail	7	17.1 %
Fine	14	34.2 %
Probation	9	22.1 %
Jail + Fine	1	2.4 %
Fine + Prob.	5	12.3 %
J + F + P	5	12.3 %
TOTAL	41	100.0 %

18. USE OF COMMUNITY SERVICES IN DISPOSITIONS

There are five community organizations in the Big Cove First Nation community. These are: The Big Cove Lone Eagle Treatment Centre (drug and alcohol), The Big Cove Alcohol and Drug Prevention Program, The Big Cove Anger Management Course, parenting classes, and The Big Cove Alcoholics Anonymous program. Some form of community-based treatment or activity was included in the dispositions of clients 71 times. Some dispositions included more than one activity. Therefore, the totals in the table below do not represent clients. Types of treatment or activity are identified rather

Table 0.18: Community-Based Elements of Dispositions

Community-Based Solution	**Number**
Drug or Alcohol Treatment	12
Anger Management	3
Parenting Skills	1
Other Community Service	55

than organizations. A large number of community service activities were ordered. Unfortunately, no details were captured.

Non-legal elements were used frequently in dispositions. This indicates that there is an existing practice of frequently using community service as a part of the disposition. There is some use of treatment as an element of dispositions to prevent re-offending. This suggests that there is already a good foundation to move beyond traditional individual case advocacy, which is the core of legal aid, to a broader "holistic services" aspect of legal aid service delivery.[9] The project was conceived as a preliminary effort, and the research was a monitoring exercise using data that were reasonably easily available. Thus this aspect of the project has been identified in a very cursory manner. However, the potential and value of this approach for this Aboriginal clientele should be explored more fully.

[9] A. Currie, Meeting the Needs of Legal Aid Clients, Department of Justice, Ottawa, 1999.

19. AFTER FIRST APPEARANCE

The subject of this research was the Aboriginal Duty Counsel project. This was a more ***intensive*** duty counsel project in the sense that it was designed to allow for better communication between Aboriginal clients and the Aboriginal duty counsel lawyer. However, the project was a conventional duty counsel service. The duty counsel lawyer did not attempt to dispose of cases as with the expanded duty counsel model.[10] The duty counsel lawyer did not also take legal aid certificates. Thus there was no opportunity for continuity of service between duty counsel and trial level representation. It was of interest to determine what happened to the Aboriginal clients after the duty counsel stage.

The list of clients who entered not guilty pleas was matched with legal aid files to identify those who subsequently applied for legal aid. Adjournments were not included since it was uncertain whether these would subsequently become guilty or not guilty pleas.

The 172 guilty pleas did not represent 172 separate individuals. Some were repeat clients. Thirty repeat offenders accounted for 57 separate duty counsel contacts. This yielded a count of 115 unduplicated individuals. However, offenders could apply for legal aid more than once.

A total of 46 Aboriginal Duty Counsel clients applied for legal aid. Twenty-eight people, 60.8 %, received legal aid. Eight people, representing 17.3 % were refused service, and 10 applicants, 21.7 %, did not return after the initial application.

Table 0.19: Applications for Full Legal Aid Service

Application Status	**Number**	**Percent**
Accepted	28	60.8 %
Refused	8	17.3 %
Withdrawn	10	21.7 %
TOTAL	46	100.0 %

The overall rate of refused/withdrawn applications for Legal Aid New Brunswick was 35.5 % in 1998-1999.[11] The combined percentage for refused and withdrawn applications for this group is about the same level at 39 %.

Most of the applicants who were refused or who withdrew applications were male. Twelve applicants, 66.7 % were male and 6 applicants, 33.3 %, were female.
Among the eight refused applications, three were not financially eligible, four were rejected on the basis for coverage, and one application was refused on the basis of "abuse of the system". The latter designation normally means more than three certificates per year result in a conviction have been made by the same individual.

[10] Supra, note 8.
[11] Annual Report, Legal Aid New Brunswick, 1998-1999. Calculated from data at page 5.

The offences committed by applicants who withdrew applications or who were refused service are shown in the table below. The distribution of offences seems similar to the
Table 0.20: Offences by Refused and Withdrawn Applicants

Offence	Number	Percent
Break and Enter	2	11.1 %
Assault	7	38.9 %
Mischief	4	22.2 %
Sexual Assault	2	11.1 %
Breach of Probation	1	5.6 %
Uttering Threats	2	11.1 %
TOTAL	18	100.0 %

overall distribution of offences. Minor offences such as assault and mischief are the most commonly occurring offences.

Twenty-eight people received a legal aid certificate. All 28 were adult offenders.

In terms of age, five of the twenty-eight were 24 years of age. Otherwise, ages ranged from 19 to 53 with no more than two persons falling into the same single year of age.

Seventeen males, 60.7 %, received certificates. Eleven females, or 39.3 percent received certificates. Females made up 32.5 % of all contacts in the Aboriginal Duty Counsel project. Males comprised 67.5 %. The proportions eventually receiving full legal aid service are similar.

Table 0.21: Duty Counsel and Full Legal Aid Service by Gender

Male		Female	
No.	%	No.	%
Full Service			
17	60.7 %	11	39.3 %
Duty Counsel			
146	67.8 %	99	32.4 %

More than half of the people who received certificates were charged with assault. Others were charged with more serious offences.

Table 0.22: Most Serious Offences For People Receiving Legal Aid Certificates

Offence	Number	Percent
Homocide	1	3.6 %
Break and Enter	4	14.3 %
Assault	15	53.6 %
Fraud/False Pretense	1	3.6 %
Mischief	2	7.1 %
Possession of Weapon	1	3.6 %
Sexual Assault	1	3.6 %
Obstructing Peace Officer	1	3.6 %
Uttering Threats	2	7.1 %
TOTAL	28	100.0 %

At the time that the data were collected, only half of those having received legal aid certificates had their cases completed.

Table 0.23: Dispositions of Aboriginal Legal Aid Clients

Disposition	Number	Percent
Convicted	8	28.6 %
Acquitted/Withdrawn	4	14.3 %
Client Changed Plea W/O Representation	1	3.6 %
Certificate Cancelled	1	3.6 %
Not Concluded	14	50.0 %
TOTAL	28	100.0 %

20. DID NOT APPLY OR RECEIVE SERVICE

There were 115 individuals (out of the 172 duty counsel contacts who entered guilty pleas). Forty-six applied for legal aid and 18 were rejected or withdrew their applications. The resulting arithmetic indicates that a total of 87 people who entered guilty pleas did not receive legal aid. In addition, some of the 58 people whose cases were adjourned would have entered not guilty pleas. The people who entered guilty pleas would likely have been represented by the Aboriginal Duty Counsel project lawyer.

There is no information about what happened to the people from among the 87 who did not receive legal aid. We do not know how many might have retained a lawyer privately, and how many would have simply appeared unrepresented in provincial court.

21. CONCLUDING REMARKS

This project was clearly successful in reducing the number of clients requiring adjournments to move them through the first appearance or pleading stage. This most likely was the result of improved communication between the Aboriginal duty counsel lawyer and the Aboriginal clients. However, this is an inference surmised from the reduction of adjournments, rather than from direct evidence.

The amount of time that the Aboriginal duty counsel lawyer spent with clients was not recorded. Therefore, it is not possible to measure with precision whether the reduction in the number of clients requiring adjournments represents a cost saving. The reduction in the number of adjournments would, on the surface, suggest a cost saving in both legal aid and court expenditures.

However, the reduction in the number of adjournments appears to have led to an increased number of pleas of not guilty. This could possibly lead to greater down stream costs. There was a small number of legal aid certificates issued to clients of the Aboriginal duty counsel project. It is not known if this represents an increase over the previous years, and therefore, if this represents a potential cost increase. Similarly, it is not known how many of the people pleading guilty would eventually appear un-represented in court and increase court time and costs that might be required to deal with un-represented accused. This would impact on judge's time, Crown prosecutor's time, and other costs related to potentially longer proceedings.

Un-represented accused also raises the possibility that the judge will order representation to be provided. There may be costs related to court-appointed counsel. A thorough evaluation of this project should address these issues.

The reduced number of adjournments resulted mainly in an increased number of clients entering pleas of not guilty, rather than guilty pleas. This is a clear indication that the project duty counsel lawyer was acting in the interest of her clients. This is not a trial court and we do not know whether the increased number of clients who entered not guilty pleas at first appearance eventually entered guilty pleas at provincial trial court, and whether they were subsequently convicted or acquitted. The larger number of not guilty pleas indicates that interests of justice in the conventional sense were served at first appearance court.

A large percentage of the Aboriginal people who were served by the duty counsel project reported that they either spoke English poorly or not at all. The data from the project do not show a greater tendency on the part of people with limited English language skills to plead guilty at first appearance. This may have been because of the presence of the Aboriginal lawyer who spoke the Mi' Kmaq language. Unfortunately, data on linguistic ability are not available for the comparison groups from the regular duty counsel service.

A large percentage of the Aboriginal duty counsel clients were women, about twice as many as among non-Aboriginal people. There was some evidence to support the claim that women committed a greater number of less serious crimes, and have fewer prior convictions. It would

therefore be less likely to receive criminal legal aid service. This is not a critique of conventional criminal legal aid. However, it will be revisited below in another part of the discussion.

A change already proposed for the second year of the Aboriginal duty counsel project is that the project lawyer will accept legal aid certificates for Aboriginal clients. It was determined that the 305 duty counsel contacts from the project represented 146 individuals. Forty-six of these people, 31.5 %, applied for legal aid. Of the 46 applicants, about 60 % received certificates. The extension of the project to accept certificates will allow those receiving legal aid certificates to receive the services of an Aboriginal lawyer.

However, there remain a number of people who are not receiving service. Combining those who did not apply with those who were refused or withdrew their applications, as many as 87 people did not receive legal aid service. Sixty-nine of these people entered not guilty pleas. Many of these people may not have met the basic coverage provision of risk of incarceration. The majority of those who entered guilty pleas were charged with relatively minor offences such as assault, mischief, and motor vehicle offences. Other service delivery responses might be useful. One idea might be to expand the normal range of work of the duty counsel lawyer to provide limited assistance to people who wish to plead not guilty but will not receive legal aid. These clients may have to represent themselves at provincial trial court. Advice from the lawyer could be combined with basic written material on the criminal justice process. It might be argued that representing one's self in a criminal proceeding is never a good option. However, research on assisted self-representation carried out in British Columbia indicated that clients who were refused criminal legal aid benefited from both printed material and advice from duty counsel lawyers in understanding their situation and in considering the options available to them.[12] It was noted above than many Aboriginal clients do not speak or read English or French well. This would have to be taken into account in any limited assistance project of this sort.

Forty clients served by the Aboriginal Duty Counsel project entered guilty pleas. This represents 27 % of all persons served by duty counsel. This suggests that the duty counsel lawyer might take an approach similar to the expanded duty counsel concept. Expanded duty counsel is a "disposition model" of duty counsel in which the objective is to remove simple cases from the docket as early as possible in the criminal justice process, while seeking the best disposition for the client.[13] One of the main elements of the expanded duty counsel approach is already present with the Aboriginal duty counsel. The duty counsel lawyer is assigned to the same court on a continuous basis. This continuity enables a prolonged period of contact with the client in order to allow the duty counsel lawyer sufficient time to become familiar with the facts of the case. This usually involves interviewing the client and considering any evidence presented by the police. A second element of the continuity is that the duty counsel lawyer has time to discuss the matter with the Crown Prosecutor, and to negotiate the best outcome for the client. Unless financial eligibility were considered, this would have the effect of extending legal aid service to those Aboriginal people who will appropriately plead guilty, providing for them some limited service that they would not otherwise receive.

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[12] A. Currie and Carol McEown, Assisted Self-Representation in Criminal Legal Aid: An Experiment in Limited Service Delivery, Department of Justice, Ottawa, 1998.

[13] Supra, footnote 8.

The data showed that there is a very high level of offending among the Aboriginal population served by this project. The self-report data indicated that 40 % of the duty counsel clients indicated that this was their first offence. This suggests a way in which legal aid might be able to play a part in addressing the problem of over-representation of Aboriginal people in the justice system. This would be to avoid the first turn of the revolving door syndrome by trying to avoid the first conviction. Even if a first time offender would not normally meet the legal aid coverage provisions, this would be a worthwhile aspect of legal aid service. Legal aid duty counsel service is strategically positioned in the justice system to undertake this sort of intervention.

However, to make the leap from the traditional core of case advocacy in legal aid to providing holistic justice services[14], the legal aid organizations requires partners. Those partners are the diversion programs and the related community services to which clients could be referred. This is an issue that policy makers in other parts of the justice system should consider seriously. Legal aid policy and delivery system development must occur within the broader framework of justice policy.

Community-based services that deal with anger management, drug and alcohol abuse, and parenting skills, as well as other community service activities, were used quite frequently in dispositions. No data were gathered on the extent to which alcohol or other substance abuse was an element of the offences committed by this client population. Similarly, no data were gathered on the personal histories of offenders that might indicate the extent to which anger control issues were related to the offences committed. drug abuse, anger management issues, and domestic violence. These are the kinds of community services that would be important aspects of a broader, holistic justice approach if the project were to evolve toward more intensive and comprehensive duty counsel services.

During the first year, the Aboriginal Duty Counsel lawyer did not attend first appearance court on all court days. Aboriginal clients who received the regular duty counsel service during 1998-1999 experienced adjournments at a much higher rate than the clients served by the project, and at about the same rate as they did overall prior to the project. This suggests that the project should be extended so that the Aboriginal duty counsel lawyer could deal with all Aboriginal accused. This might require some assistance, such as a paralegal worker.

It seems as if the Aboriginal lawyer was the key to the success of this project. This is, at the same time, the "Achilles heel" of the project. The project is vulnerable to the Aboriginal lawyer leaving. The number of Aboriginal lawyers is small, and a suitable replacement might be very difficult to find. Some consideration should be given to finding a way to reduce the vulnerability of the project to idiosyncratic factors. An Aboriginal paralegal, working with a non-Aboriginal lawyer who is known and respected in the Aboriginal community, is a possibility.

In recent years, increasing attention has been paid to the importance of duty counsel services in the overall service delivery system.[15] This duty counsel project can be seen within the broader trend of providing more intensive duty counsel services to address a number of service delivery

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[14] Supra, footnote 9.

[15] A. Curne, Legal Aid Delivery Models in Canada: Past Experience and Future Direction, Department of Justice, Ottawa, 1999.

issues. The project was designed to improve service delivery to Aboriginal people in one part of New Brunswick with a particularly high concentration of Aboriginal people.

This preliminary assessment indicates that the project appears to have addressed the problem first identified by Legal Aid New Brunswick. The presence of the Aboriginal duty counsel lawyer significantly reduced number of adjournments experienced by Aboriginal people. Although there is no direct evidence at this stage of the research, this appears to have resulted from better communication between the duty Aboriginal lawyer and the clients.